



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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September 12, 2003

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State Controller, Sacramento

TIMOTHY W. BOYER  
Interim Executive Director

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the September 24, 2003 Business Taxes Committee meeting. This meeting will address proposed amendments to Regulation 1616, *Federal Areas*, to incorporate the provisions of Assembly Bill 2701 (Stats. 2002, Ch. 593). The bill excluded the tax imposed by an Indian tribe from the gross receipts subject to the California sales and use tax for sales made on the Indian reservation.

Action 1 on the Agenda consists of items on which we believe interested parties and staff are in agreement. If you wish to have any consent items (Action 1) discussed fully at the Committee meeting, you must contact a Board Member prior to September 24, 2003 to request removal of the item from the Consent Agenda. In addition, please notify Ms. Charlotte Paliani, Program Planning Manager, after you contact a Board Member's Office. Ms. Paliani may be reached at (916) 324-1825.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Board Meetings and Committee Information" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/meetings.htm#two>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m. on September 24, 2003** in Room 121 at the address shown above.

Sincerely,

Ramon J. Hirsig  
Deputy Director  
Sales and Use Tax Department

RJH: lk

Enclosures

cc: (all with enclosures)

Honorable Carole Migden, Chairwoman  
Honorable Claude Parrish, Vice Chairman  
Honorable Bill Leonard, Member, Second District (MIC 78)  
Honorable John Chiang, Member, Fourth District  
Honorable Steve Westly, State Controller, C/O Ms. Marcy Jo Mandel  
Ms. Carole Ruwart, Board Member's Office, First District (MIC 71)  
Ms. Sabina Crocette, Board Member's Office, First District  
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)  
Mr. Romeo Vinzon, Board Member's Office, Third District (via e-mail)  
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)  
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)  
Mr. Tim Treichelt, Board Member's Office, Second District (via e-mail)  
Mr. John Thiella, Board Member's Office, Fourth District (MIC 72)  
Mr. Timothy Boyer (MIC 73)  
Acting Chief Counsel (MIC 83)  
Ms. Janice Thurston (MIC 82)  
Mr. Warren Astleford (MIC 82)  
Ms. Carla Caruso (MIC 82)  
Ms. Jean Ogrod (via e-mail)  
Mr. Jeff Vest (via e-mail)  
Mr. David Levine (MIC 85)  
Mr. Steve Ryan (via e-mail)  
Mr. Rey Obligacion (via e-mail)  
Ms. Jennifer Willis (MIC 70)  
Mr. Dan Tokutomi (via e-mail)  
Mr. Dave Hayes (MIC 67)  
Ms. Charlotte Paliani (MIC 92)  
Mr. Joseph Young (via e-mail)  
Mr. Jerry Cornelius (via e-mail)  
Mr. Jeffrey L. McGuire (via e-mail)  
Mr. Vic Anderson (MIC 40 and via e-mail)  
Mr. Larry Bergkamp (via e-mail)  
Mr. Geoffrey E. Lyle (MIC 50)  
Ms. Lauren Simpson (MIC 50)  
Ms. Leila Khabbaz (MIC 50)  
Ms. Cecilia Watkins (MIC 50)

**AGENDA — September 24, 2003 Business Taxes Committee Meeting**  
**Proposed Regulatory Changes to Incorporate Newly Enacted Revenue and Taxation Code Sections**  
**6011(c)(12) and 6012(c)(12) Regarding Taxes Imposed by Indian Tribes into**  
**Regulation 1616, *Federal Areas***

<p><b>Action 1 — Agreed Item</b></p> <p>Regulation 1616(d)(3)(C), Tribal Tax.  Agenda, page 2.</p>	<p>Adopt staff's proposed amendments to Regulation 1616(d), as follows:</p> <p>Add a subdivision to provide that the sales price or gross receipts subject to the California sales and use tax do not include the amount of tax imposed by an Indian tribe, provided the retailer is in substantial compliance with the Sales and Use Tax Law.</p>
<p><b>Action 2 – Authorization to Publish</b></p>	<p>Recommend publication of amendments to Regulation 1616 as adopted in the above action.</p> <p>Operative Date: January 1, 2003  Implementation: 30 days following OAL approval</p>

**AGENDA — September 24, 2003 Business Taxes Committee Meeting**  
**Proposed Regulatory Changes to Incorporate Newly Enacted Revenue and Taxation Code Sections**  
**6011(c)(12) and 6012(c)(12) Regarding Taxes Imposed by Indian Tribes**  
**Regulation 1616, *Federal Areas***

Action Item	Staff's Proposed Regulatory Language
<p><b>Action 1 —</b> <b>Consent Items</b></p>	<p><b>Regulation 1616. FEDERAL AREAS.</b></p> <p><u>(C) Tribal Tax.</u> Operative January 1, 2003, the measure of the California sales or use tax, that is, the sales price or gross receipts from a retail sale, does not include the amount of tax imposed by an Indian tribe on its reservation within the state of California upon or with respect to a retail sale of tangible personal property on the Indian tribe's reservation. To qualify for this exclusion, the following conditions must be met:</p> <ol style="list-style-type: none"> <li><u>1. The tribal tax must be imposed by the governing body of the Indian tribe upon whose reservation the sale is made.</u></li> <li><u>2. The tribal tax must be measured by a stated percentage of the sales price or gross receipts, whether the tribal tax is imposed upon the retailer or the consumer.</u></li> <li><u>3. The retailer must maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return, as explained in Regulation 1698.</u></li> <li><u>4. At the time of the sale, the retailer must hold a valid and active seller's permit or a valid and active certificate of registration – use tax issued by the Board.</u></li> <li><u>5. At the time of the sale, the retailer must have no final and delinquent tax liability owed the Board with respect to Board-assessed taxes, and no delinquent tax liability owed the Board with respect to self-assessed tax.</u></li> </ol> <p><b>(CD) Resale Certificates.</b></p>

Issue Paper Number 03-010



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

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**Proposed Regulatory Changes to Incorporate Newly Enacted Revenue and Taxation Code Sections 6011(c)(12) and 6012(c)(12) Regarding Taxes Imposed by Indian Tribes into Regulation 1616, *Federal Areas***

**I. Issue**

Should the Board adopt proposed amendments to Regulation 1616, *Federal Areas*, to implement the newly enacted provisions of Revenue and Taxation Code (RTC) sections 6011(c)(12) and 6012(c)(12), which exclude from the definition of “gross receipts” and “sales price” the amount of tax imposed by any Indian tribe when the retailer is in substantial compliance with the Sales and Use Tax Law?

**II. Staff Recommendation**

Staff recommends that subdivision (d)(3)(C) be added to Regulation 1616 to provide that, operative January 1, 2003, the sales price or gross receipts subject to the California sales and use tax do not include the amount of tax imposed by an Indian tribe on its reservation with respect to a retail sale of tangible personal property on the Indian tribe's reservation, provided the retailer is in substantial compliance with the Sales and Use Tax Law. Staff recommends the inclusion of subdivision (d)(3)(C)1. – (d)(3)(C)5., delineating the conditions that must be met to qualify for this exclusion.

A copy of the proposed amendments is illustrated in Exhibit 2. See Issue Paper (IP) pages 2-4, and agenda action item 1. The proposed amendments are scheduled for discussion at the September 24, 2003 meeting of the Business Taxes Committee.

**III. Other Alternative(s) Considered**

Do not adopt proposed amendments to Regulation 1616, *Federal Areas*. See IP page 4.

Issue Paper Number 03-010

#### **IV. Background**

RTC sections 6011 and 6012 generally define “gross receipts” and “sales price” as the total amount for which tangible personal property is sold, leased or rented, but specifically exclude certain taxes and other amounts, thereby excluding these amounts from the computation of the tax.

Operative January 1, 2003, Assembly Bill 2701 (AB 2701), (Stats. 2002, Ch. 593) added subdivision (c)(12)(A) to RTC sections 6011 and 6012 to provide that the terms “gross receipts” and “sales price” do not include the amount of tax imposed by any Indian tribe within California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer. Newly enacted subdivision (c)(12)(B) of RTC sections 6011 and 6012 further specifies that the exclusion only applies to those retailers who are in substantial compliance with the Sales and Use Tax Law. A copy of AB 2701 is attached as Exhibit 3.

Prior to these amendments, the California sales and use tax was computed on the gross receipts or sales price including the amount of tax imposed by the Indian tribe. For example, if an Indian tribe imposed a two percent tax on sales of tangible personal property on its reservation, and the retail price of a bicycle was \$100, the gross receipts or sales price subject to the California sales or use tax would have been \$102. Assuming a sales and use tax rate of 7.5 percent, the retailer’s California sales or use tax liability would have totaled \$7.65. Using the same example after January 1, 2003, for an on-reservation retailer in substantial compliance with the Sales and Use Tax Law, the gross receipts or sales price subject to California sales or use tax is \$100 (excluding the \$2 Indian tax), and the amount of the sales or use tax liability totals \$7.50.

Regulation 1616(d) concerning Indian reservations generally provides that tax applies to on-reservation sales by non-Indian retailers to non-Indians and Indians not residing on a reservation, but not to on-reservation sales to Indians residing on a reservation. The regulation further provides that sales tax does not apply to any on-reservation sales made by Indian retailers, whether to Indians who reside on a reservation, non-Indians, or Indians who do not reside on a reservation. However, an on-reservation Indian retailer is responsible for collecting the use tax from non-Indians and Indians not residing on a reservation unless the on-reservation retail sale is otherwise not subject to tax. Furthermore, Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation.

Interested parties meetings were held on June 3 and July 22, 2003, to discuss staff’s proposed amendments. The discussion centered on the interpretation of the statutory requirement that the retailer be in “substantial” compliance with the Sales and Use Tax Law. Staff responded to the questions posed by interested parties and received no submissions objecting to this proposed revision to Regulation 1616.

#### **V. Staff Recommendation**

##### **A. Description of the Staff Recommendation**

The proposed regulatory amendments clarify that the tribal tax must be measured by a stated percentage of the sales price or gross receipts and must be imposed by the governing body of the Indian tribe upon whose reservation the sale is made. In addition, the retailer must be in substantial compliance with the Sales and Use Tax Law. For purposes of subdivision (d)(3)(C) of Regulation 1616, substantial compliance is interpreted to mean:

(1) The retailer must maintain and make available for examination by the Board all records necessary to determine the correct tax liability under the Sales and Use Tax Law, and all records necessary for the proper completion of the Sales and Use Tax return, as explained in Regulation 1698, *Records*. A copy of Regulation 1698 is available on-line at <http://www.boe.ca.gov/pdf/reg1698.pdf>. Failure to make the books and records available for audit or other examination means that the retailer is not in substantial compliance. Therefore, the tribal tax would be included in the gross receipts or sales price subject to the sales or use tax on sales for the period during which the retailer is not in substantial compliance. This requirement is not intended, however, to invalidate the Indian tax exclusion solely on the basis that a Board examination of a taxpayer's records disclosed isolated errors, such as an unsupported claimed sale for resale, or an unsupported exemption, such as a sale of nontaxable food products. In addition, the imposition of a negligence penalty as a result of a Board examination of a taxpayer's records does not, by itself, invalidate the Indian tax exclusion for sales made during the period under examination.

(2) At the time of the sale, the retailer must hold a valid and active seller's permit or a valid and active certificate of registration – use tax issued by the Board. Under California's Sales and Use Tax Law, a valid and active seller's permit is required of every person engaged in the business of selling (or leasing under a lease defined as a sale in RTC section 6006(g)) in this state tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax.<sup>1</sup> Out-of-state retailers engaged in business in California and making sales of tangible personal property, the storage, use or other consumption of which is subject to tax, are required to register with the Board, collect the California use tax from the consumer and pay it to the state. If the retailer operates without a valid and active seller's permit or a valid and active certificate of registration – use tax, the tribal tax would be included in the gross receipts or sales price subject to the sales or use tax for sales made during such period of operation, even if the retailer subsequently obtains a seller's permit or certificate of registration – use tax.

(3) At the time of the sale, the retailer must have no final and delinquent tax liability owed the Board with respect to Board-assessed taxes, and must have no delinquent tax liability owed the Board with respect to self-assessed taxes.

Board-assessed liabilities generally result from field audits, examination of records from which a field billing order is prepared, or computation errors by taxpayers on various returns. The tax liability becomes final 30 days after issuance of a billing in the form of a notice of determination, unless the taxpayer files a petition for redetermination. A deficiency determination will not become final while the disputed liability is in the appeals process.

Delinquent self-assessed taxes are what the taxpayer declares as owing, but has not paid. Delinquent self-assessed taxes result from, but are not limited to, the filing of “no remittance” returns, returns that are accompanied by checks that are dishonored by the bank, or “partial remittance” returns. During the period of such delinquency with respect to Board-assessed or self-assessed taxes, the tribal tax would be included in the gross receipts or sales price subject to the sales or use tax.

Guidance to staff will be provided in the Audit Manual and Compliance Policy and Procedures Manual, when procedures are developed as needed to administer the Indian tax exclusion.

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<sup>1</sup> Revenue and Taxation Code section 6017 defines “in this state” to mean within the exterior limits of the State of California, and includes all territory within these limits owned by or ceded to the United States of America. By statute, therefore, an Indian reservation within the exterior limits of California is “in this state.”

**B. Pros of the Staff Recommendation**

Interprets and clarifies the application of tax to gross receipts subject to taxes imposed by Indian tribes. The explanation of what constitutes “substantial compliance” with the Sales and Use Tax Law will avoid uncertainty and confusion.

**C. Cons of the Staff Recommendation**

Requires regulatory amendment.

**D. Statutory or Regulatory Change**

Requires an amendment to Regulation 1616.

**E. Administrative Impact**

Staff will be required to notify taxpayers of the amendments to the regulation through an article in the Tax Information Bulletin (TIB), and to update and distribute the amended regulation. Staff will also mail a special notice to approximately 100 Indian tribes in California, notifying them of the new revisions to Regulation 1616.

**F. Fiscal Impact**

**1. Cost Impact**

There will be no additional costs. Staff will notify taxpayers of the new regulation through a TIB article. The workload associated with publishing and distributing the TIB is considered routine and any corresponding cost would be within the Board’s existing budget. It is also anticipated that a special notice will be mailed to approximately 100 Indian tribes. The staff’s labor cost to produce the notice is already included in the existing budgeted expenditures; the additional cost for materials and postage of 100 copies of the special notice is considered minimal.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact**

Provides taxpayers with guidelines for the requirements enacted by AB 2701, regarding the exclusion of the Indian tax from the gross receipts subject to the California sales and use tax, thereby reducing uncertainty and confusion.

**H. Critical Time Frames**

The provisions of the proposed amendments are operative January 1, 2003. Implementation will take place 30 days following approval of the regulation by the State Office of Administrative Law.

**VI. Alternative 1**

**A. Description of the Alternative**

Do not adopt proposed amendments to Regulation 1616, *Federal Areas*.

**B. Pros of the Alternative**

Does not require regulatory amendment.



**C. Cons of the Alternative**

Does not interpret and clarify the statutory language.

**D. Statutory or Regulatory Change**

None.

**E. Administrative Impact**

None.

**F. Fiscal Impact**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact**

The newly-enacted provisions of RTC sections 6011 and 6012 would not be explained in a Board regulation. Most significantly, an explanation of the statutory requirement that a “retailer must be in substantial compliance” with the Sales and Use Tax Law would not be readily available.

**H. Critical Time Frames**

None.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: September 3, 2003



BOARD OF EQUALIZATION  
**REVENUE ESTIMATE**

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**Proposed Regulatory Changes to Incorporate Newly Enacted Revenue and  
Taxation Code Sections 6011(c)(12) Regarding Taxes Imposed by Indian  
Tribes into Regulation 1616, *Federal Areas***

**Recommendation and Alternatives**

**Staff Recommendation:**

Staff recommends that subdivision (d)(3)(C) be added to Regulation 1616 to provide that, operative January 1, 2003, the sales price or gross receipts subject to the California sales and use tax do not include the amount of tax imposed by an Indian tribe on its reservation with respect to a retail sale of tangible personal property on the Indian tribe's reservation, provided the retailer is in substantial compliance with the Sales and Use Tax Law. Staff recommends the inclusion of subdivision (d)(3)(C)1. – (d)(3)(C)5., delineating the conditions that must be met to qualify for this exclusion.

**Alternative 1:**

Do not adopt the proposed Regulation 1616, *Federal Areas*.

**Background, Methodology, and Assumptions**

**Staff Recommendation:**

There is nothing in the proposed new Regulation 1616 that would impact revenues, since it merely incorporates the provisions of AB 2701, Statutes of 2002.

**Alternative 1:**

Alternative 1 has no revenue effect because absent this regulatory change the Board must still adhere to the provisions of AB 2701.

**Revenue Summary**

The staff recommendation has no revenue effect.

The alternative proposal has no revenue effect.

## **Preparation**

Bill Benson, Jr., Research and Statistics Section prepared this revenue estimate. Mr. Dave Hayes, Manager, Research and Statistics Section and Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of August 13, 2003

## **Regulation 1616. FEDERAL AREAS.**

**(a) IN GENERAL.** Tax applies to the sale or use of tangible personal property upon Federal areas to the same extent that it applies with respect to sale or use elsewhere within this state.

**(b) ALCOHOLIC BEVERAGES.** Manufacturers, wholesalers and rectifiers who deliver or cause to be delivered alcoholic beverages to persons on Federal reservations, shall pay the state retailer sales tax on the selling price of such alcoholic beverages so delivered, except when such deliveries are made to persons or organizations which are instrumentalities of the Federal Government or persons or organizations which purchase for resale.

Sales to officers' and non-commissioned officers' clubs and messes may be made without sales tax when the purchasing organizations have been authorized, under appropriate regulations and control instructions, duly prescribed and issued, to sell alcoholic beverages to authorized purchasers.<sup>1</sup>

**(c) SALES THROUGH VENDING MACHINES.** Sales through vending machines located on Army, Navy, or Air Force installations are taxable unless the sales are made by operators who lease the machines to exchanges of the Army, Air Force, Navy, or Marine Corps, or other instrumentalities of the United States, including Post Restaurants and Navy Civilian Cafeteria Associations, which acquire title to and sell the merchandise through the machines to authorized purchasers.

For the exemption to apply, the contracts between the operators and the United States instrumentalities and the conduct of the parties must make it clear that the instrumentalities acquire title to the merchandise and sell it through machines leased from the operators to authorized purchasers.

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<sup>1</sup>The following is a summary of the pertinent regulations which have been issued:

**(a) GENERAL.** Air Force Regulation 34-57, issued under date of February 9, 1968, Army Regulation 210-65, issued under date of May 4, 1966, and Navy General Order No. 15, issued under date of May 5, 1965, authorize the sale and possession of alcoholic beverages at bases and installations subject to certain enumerated restrictions.

**(b) AIR FORCE.** Air Force Regulation 34-57, Paragraph 5, permits commissioned officers' and noncommissioned officers' open messes, subject to regulations established by commanders of major air commands to sell alcoholic beverages to authorized purchasers at bars and cocktail lounges, and provides that commanders will issue detailed control instructions. Paragraph 8 and 9 require commanders of major air commands to issue regulations relative to package liquor sales and to procurement of alcoholic beverages, respectively.

**(c) ARMY.** Army Regulation 210-65, Paragraph 9, provides that major commanders are authorized to permit at installations or activities within their respective commands the dispensing of alcoholic beverages by the drink or bottle. Paragraph 11 of AR 210-65 provides that when authorized by major commanders as prescribed in Paragraph 9, AR 210-65, officers' and non-commissioned officers' open messes may, subject to regulations prescribed by the commanding officer of the installation or activity concerned, dispense alcoholic beverages by the drink, and operate a package store.

**(d) NAVY.** Navy General Order No. 15 provides that commanding officers may permit, subject to detailed alcoholic beverage control instructions, the sales of packaged alcoholic beverages by officers' and noncommissioned officers' clubs and messes and the sale and consumption of alcoholic beverages by the drink in such clubs and messes.

**(d) INDIAN RESERVATIONS.**

(1) IN GENERAL. Except as provided in this regulation, tax applies to the sale or use of tangible personal property upon Indian reservations to the same extent that it applies with respect to sale or use elsewhere within this state.

(2) DEFINITIONS. For purposes of this regulation "Indian" means any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior. Indian organizations are entitled to the same exemption as are Indians. "Indian organization" includes Indian tribes and tribal organizations and also includes partnerships all of whose members are Indians. The term includes corporations organized under tribal authority and wholly owned by Indians. The term excludes other corporations, including other corporations wholly owned by Indians. "Reservation" includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.

(3) SALES BY ON-RESERVATION RETAILERS.

**(A) Sales by Indians.**

1. Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Except as exempted below, Indian retailers are required to collect use tax from such purchasers and must register with the Board for that purpose.

Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation.

**(B) Sales by non-Indians.**

1. Sales by non-Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by retailers when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on a reservation. The sale is exempt whether the retailer is a federally licensed Indian trader or is not so licensed. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by non-Indians to non-Indians and Indians who do not reside on a reservation. Either sales tax or use tax applies to sales of tangible personal property by non-Indian retailers to non-Indians and Indians who do not reside on a reservation.

**(C) Tribal Tax.** Operative January 1, 2003, the measure of the California sales or use tax, that is, the sales price or gross receipts from a retail sale, does not include the amount of tax imposed by an Indian tribe on its reservation within the state of California upon or with respect to a retail sale of tangible personal property on the Indian tribe's reservation. To qualify for this exclusion, the following conditions must be met:

1. The tribal tax must be imposed by the governing body of the Indian tribe upon whose reservation the sale is made.

2. The tribal tax must be measured by a stated percentage of the sales price or gross receipts, whether the tribal tax is imposed upon the retailer or the consumer.

3. The retailer must maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return, as explained in Regulation 1698.

4. At the time of the sale, the retailer must hold a valid and active seller's permit or a valid and active certificate of registration – use tax issued by the Board.

5. At the time of the sale, the retailer must have no final and delinquent tax liability owed the Board with respect to Board-assessed taxes, and no delinquent tax liability owed the Board with respect to self-assessed tax.

**(CD) Resale Certificates.** Persons making sales for resale of tangible personal property to retailers conducting business on an Indian reservation should obtain resale certificates from their purchasers. If the purchaser does not have a permit and all the purchaser's sales are exempt under paragraph (d)(3)(A) of this regulation, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number (see Regulation 1668, "Resale Certificates").

(4) Sales by Off-Reservation Retailers.

**(A) Sales Tax - In General.** Sales tax does not apply to sales of tangible personal property made to Indians negotiated at places of business located outside Indian reservations if the property is delivered to the purchaser and ownership to the property transfers to the purchaser on the reservation. Generally ownership to property transfers upon delivery if delivery is made by facilities of the retailer and ownership transfers upon shipment if delivery is made by mail or carrier. Except as otherwise expressly provided herein, the sales tax applies if the property is delivered off the reservation or if the ownership to the property transfers to the purchaser off the reservation.

**(B) Sales Tax - Permanent Improvements - In General.** Sales tax does not apply to a sale to an Indian of tangible personal property (including a trailer coach) to be permanently attached by the purchaser upon the reservation to realty as an improvement if the property is delivered to the Indian on the reservation. A trailer coach will be regarded as having been permanently attached if it is not registered with the Department of Motor Vehicles. Sellers of property to be permanently attached to realty as an improvement should secure exemption certificates from their purchasers (see Regulation 1667, "Exemption Certificates").

**(C) Sales Tax - Permanent Improvements - Construction Contractors.**

1. Indian contractors. Sales tax does not apply to sales of materials to Indian contractors if the property is delivered to the contractor on a reservation. Sales tax does not apply to sales of fixtures furnished and installed by Indian contractors on Indian reservations. The term "materials" and "fixtures" as used in this paragraph and the following paragraph are as defined in Regulation 1521 "Construction Contractors."

2. Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations.

**(D) Use Tax - In General.** Except as provided in paragraphs (d)(4)(E) and (d)(4)(F) of this regulation, use tax applies to the use in this state by an Indian purchaser of tangible personal property purchased from an off-reservation retailer for use in this state.

**(E) Use Tax - Exemption.** Use tax does not apply to the use of tangible personal property (including vehicles, vessels, and aircraft) purchased by an Indian from an off-reservation retailer and delivered to the purchaser on a reservation unless, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

**(F) Leases.** Neither sales nor use tax applies to leases otherwise taxable as continuing sales or continuing purchases as respects any period of time the leased property is situated on an Indian reservation when the lease is to an Indian who resides upon the reservation. In the absence of evidence to the contrary, it shall be assumed that the use of the property by the lessee occurs on the reservation if the lessor delivers the property to the lessee on the reservation. Tax applies to the use of leased vehicles registered with the Department of Motor Vehicles to the extent that the vehicles are used off the reservation.

BILL NUMBER: AB 2701 CHAPTERED  
BILL TEXT

CHAPTER 593  
FILED WITH SECRETARY OF STATE SEPTEMBER 16, 2002  
APPROVED BY GOVERNOR SEPTEMBER 15, 2002  
PASSED THE ASSEMBLY AUGUST 28, 2002  
PASSED THE SENATE AUGUST 27, 2002  
AMENDED IN SENATE AUGUST 12, 2002

INTRODUCED BY Assembly Member Wyman  
(Principal coauthor: Senator Chesbro) (Coauthors: Assembly Members Dickerson, Harman, Hollingsworth, and Strom-Martin)

FEBRUARY 22, 2002

An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2701, Wyman. Sales and use taxes: exclusions: Indian taxes.

The Sales and Use Tax Law imposes a state sales and use tax on the gross receipts from the sale of tangible personal property sold at retail in this state, or on the sales price of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in this state by the purchaser.

This bill would provide, for purposes of that law, that the terms "sales price" and "gross receipts" do not include taxes imposed by an Indian tribe measured by a percentage of the sales price or purchase price of tangible personal property. This bill would provide that this exclusion from the terms "sale price" and "gross receipts" would only apply to an Indian tribe that is in substantial compliance with the Sales and Use Tax Law.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemption from state sales and use taxes enacted by the Legislature are incorporated into the local taxes. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6011 of the Revenue and Taxation Code is amended to read:

6011. (a) "Sales price" means the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (1) The cost of the property sold.
- (2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.
- (3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount for which the property is sold or leased or rented includes all of the following:

- (1) Any services that are a part of the sale.
- (2) Any amount for which credit is given to the purchaser by the seller.
- (3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) "Sales price" does not include any of the following:

- (1) Cash discounts allowed and taken on sales.
- (2) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for



rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10)(A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, "technology transfer agreement" means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

**(12)(A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.**

**(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.**

SEC. 2. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) "Gross receipts" mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has

reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

(c) "Gross receipts" do not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The price received for labor or services used in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10)(A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent

of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, "technology transfer agreement" means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

**(12)(A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.**

**(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.**

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.